United States Court of Appeals

for the Second Circuit

RESPONDENT'S BRIEF

76-4135

UNITED STATES COURT of APPEALS

FOR THE SECOND CIRCUIT

THE TORRINGTON COMPANY,

Petitioner,

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND CROSS-APPLICATION
FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR
THE NATIONAL LABOR RELATIONS BOARD

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 76-4135

THE TORRINGTON COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION FOR REVIEW AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE ISSUE PRESENTED

Whether the Board properly found that the Company violated Section 8(a)(5) and (1) of the Act by refusing to supply the Union with information concerning the Company's operations at four of its plants.

COUNTERSTATEMENT OF THE CASE

This case is before the Court on the petition of the Torrington Company (herein "the Company"), pursuant to Section 10(f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 88 Stat. 395, 29 U.S.C., Sec. 151, et seq.), to review and set aside

a decision and order of the National Labor Relations Board (by Chairman Murphy and Members Fanning and Penello) (A. 42-83, 95-96).[1/] The Board has filed a cross-application requesting enforcement of its order. The Board's decision and order issued on May 3, 1976, and is reported at 223 NLRB No. 182. This Court has jurisdiction of the proceedings under Section 10(e) and (f) of the Act, the unfair labor practices having occurred in Connecticut, where the Company is engaged in the manufacture, sale and distribution of anti-friction bearings and specialty products.

I. THE BOARD'S FINDINGS OF FACT

A. Background

The Company is a Connecticut corporation with its principal office and place of business in Torrington, Connecticut (A. 43). The Union[2/] is the collective-bargaining representative of the production and maintenance employees at the Company's Standard plant in Torrington (A. 45, 49; 167-168).[3/] During a 17-week strike in 1964, the Union bargained for the inclusion of a contract clause which would protect the employees from loss of work (A. 49-50; 167-168). The Union's con-

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1/ "A." references are to the printed appendix. References preceding a semicolon are to the Board's findings; those following are to the supporting evidence.

2/ Local 1645, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America.

3/ The Union also represents production and maintenance employees at the Company's Excelsior, Broad Street and Wire plants located in Torrington, and there was testimony indicating that these plants were covered under the Standard plant contract (A. 50 n. 5; 171-172, 179-180).

cern was prompted by the Company's threats to "move out of town" because of what it considered to be excessive union demands for wage and benefit increases (A. 168). The parties ultimately agreed to the following provision, contained in Article XV (Section 15.2) of the contract (A. 108):

> If the Company transfers any operations from one of its existing plants in Torrington to another of its present plants in Torrington, or to a plant hereafter constructed or acquired by the Company within a radius of seventy-five (75) land miles from the center of the City of Torrington, the employees involved shall follow their jobs without loss of seniority or continuous Company service. In any such plant hereafter constructed or acquired within the above radius of seventy-five (75) land miles, the Company agrees to recognize Local 1645 as the bargaining representative for such employees, if it is not illegal to do so.

The most recent collective bargaining agreement, effective from May 11, 1973 through May 14, 1976, also contains the above clause (A. 48-50; 108). In addition, Section 15.7 of the current contract provides that "any dispute regarding the application of this article shall be subject to the grievance procedure and to arbitration but not the Company's decision to subcontract work or to transfer operations or equipment." (Ibid.)

B. The Company acquires several plants and transfers certain operations

In 1967, the Company acquired the Thomaston Special Tool and Manufacturing Company, including three facilities in Thomaston, Morris, and Bantam, Connecticut, which are located 25-35 miles from Torrington

(A. 50). In May 1968, the Company acquired the Vaill Company, located in Waterbury, Connecticut, about 30 miles from Torrington (A. 50; 172-173). Later in 1968, the Company moved its "swaging operations"[4/] from its Standard plant to the newly acquired Waterbury plant. Twenty-two Standard plant employees who were engaged in work in the swaging operation were offered the opportunity to transfer to the Waterbury location; five of these employees accepted the offer. (A. 51; 185.)

In early 1974, the Company moved the assembly and manufacturing of rear wheel ball bearings from its Standard plant to another of its Torrington plants known as Bonnie Mills (A. 52; 186-187). A number of employees exercised their rights under Article XV of the contract and transferred to the Bonnie Mills facility, and the Company then recognized the Union as the collective bargaining representative of the Bonnie Mills employees (Ibid.).

C. The Union receives information of further transfers

During the period 1973-1974, Union President Angelo Franculli received information concerning the transfer of work and employees from the Standard plant (A. 57). Thus, during this time, the employee responsible for cutting off steel in the machine room at the Standard plant regularly cut off steel destined for use at the Company's other

4/ "Swaging" is a process for shaping metal; the Company's swaging machinery "reduces the diameter of tube and bar stock by rotary hammer" (A. 5).

plants (A. 58; 172-176). With respect to the Waterbury plant, a sign situated near the cutting area indicated that some of the steel was designated for shipment to that plant (Ibid.). This steel, together with accompanying blueprints, was picked up about once a week by a Waterbury employee and transported to the Waterbury facility (Ibid.).

On a number of occasions in 1973 and 1974, Franculli spoke to Standard Plant Superintendent Nick Caputi and Industrial Relations Manager William Milligan about whether the cutting off of steel and shipping it to Waterbury complied with the contract (A. 58; 171, 174-176). In one instance, the question arose when Milligan informed Franculli that the Company was planning to reduce the hours of the employees in the machine shop (A. 171, 179). In response to Franculli's inquiries, Caputi and Milligan took the position that the work being sent to Company-owned plants was permissible because it could not be considered "subcontracting" of work within the meaning of the contract (A. 58; 171, 174-175).

Franculli also learned that, on approximately 16 occasions during the same 2-year period, David Hughes, a research department employee at the Standard plant, went to the Waterbury plant to perform work along with Standard Plant Research Department Engineer John Dubiel (A. 58-59; 176-177).

D. The Union seeks to obtain recognition at the Company's acquired plants

In a letter to the Company dated April 3, 1974, Franculli stated the Union's position that the operations at Waterbury, Thomaston, Bantam,

and Morris fell within the scope of Article I and XV of the contract, and requested a conference with Company representatives to discuss the matter (A. 53-54). In a reply letter dated April 19, 1974, Milligan advised Franculli of the Company's opinion that there was no legal or contractual basis for the Union's claims and that therefore there was no reason to meet with the Union (A. 55).

On May 9, 1974, the Union filed an unfair labor practice charge against the Company (Case No. 1-CA-9811) alleging, in substance, that the Company's plants at Waterbury, Thomaston, Bantam and Morris were covered by the parties' collective bargaining agreement and that the Company's refusal to bargain with respect to these plants constituted a violation of Section 8(a)(5) and (1) of the Act (A. 55-56). Later, upon learning from the Board Regional Office investigating the case that it did not have sufficient evidence to issue a complaint, Franculli, in consultation with the Union's attorney, decided to withdraw the charge without prejudice and to attempt to secure additional information regarding the Company's operations at the other plants (A. 56; 165, 168-169, 180). On June 17, 1974, the Regional Director approved the withdrawal of the charge without prejudice (A. 56; 15).

E. The Union's request for information

In a letter to the Company dated June 27, 1974, Franculli requested certain information with regard to the Waterbury, Thomaston, Bantam and Morris plants "in order to police and administer intelligently" the contract (A. 61-62; 16-18). The Union's request for information reads, in relevant part:

1. The date that each of the above operations was acquired;

* * * * *

3. The reason that each operation was acquired;

4. The date or dates that operations from the Standard Plant, if any, were transferred to each of the above operations with a full description of each operation including, but not limited to, the volume of work involved;

5. The same information as requested in paragraph 4 hereinabove with respect to any transfer of bargaining unit employees in connection with transfer of operations including, but not limited to, names of such employees;

6. The number of employees working at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

7. The volume of production of each product being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

8. The products being manufactured at the Waterbury, Thomaston, Bantam and Morris operations at the time of acquisition and at the present time;

9. The names of any bargaining unit employees who perform work both at the Standard Plant in Torrington and at any of the aforesaid four operations;

10. The name, description and volume of each product, if any, which is partially processed at the Standard Plant in Torrington and also is partially processed at one or more of the four aforesaid operations including, but not limited to, a description of each such partial process; ***5/

5/ The omitted portions of the Union's letter contain requests for data which the Board's General Counsel concluded were either irrelvant or redundant (A. 29-32). Accordingly, the General Counsel, although issuing a complaint with respect to the reprinted portions of the Union's request for information (A. 37), did not include in the

(continued)

On July 9, 1974, Milligan replied by letter to Franculli, reiterating the Company's view that it was under no obligation to deal with the Union concerning the four plants (A. 64-65; 19). By letter dated August 5, 1974, Union Attorney William Zeman repeated the Union's claim that the requested information was necessary to "carry out its statutory duty under the National Labor Relations Act to police and administer Article XV, Section 15.2" of the contract (A. 65; 20-22). Zeman's letter cited Board and Court decisions in support of the Union's position (Ibid.). In a reply letter dated September 23, 1974, Milligan rejected the Union's request for information (A. 65-66; 23).

F. Further incidents of personnel and work being transferred to the four plants

In October or November 1974, Standard Plant employee Anthony Stolfi went to the Waterbury Plant to set up some work (A. 59; 177-178). He was accompanied by Foreman Walter Schroeder (Ibid.). About this same time, Philomena Cisowski, a press operator at the Standard Plant, commenced work on a sample of 100 pieces of a new type of precision bearing (A. 60-61; 183-184). Her supervisor told her that the Standard Plant employees would begin assembling this bearing in April 1975 (Ibid.). However, such production did not begin at the plant (Ibid.). On April 2, 1975, Cisowski noticed a component part of

5/ complaint any allegation about the Company's failure to respond to the omitted paragraphs and hence the propriety of the Company's refusal to do so is not in issue in this case.

the bearing, but an operation sheet on the part indicated that it was destined for a vendor, the Thomaston Specialty Products Company (Ibid.). When Ciesowski later asked her forelady about the bearing, she was told "it doesn't look good" (Ibid.).

G. The Company's November 25, 1974 letter

Following the filing of the instant unfair labor practice charges against the Company on October 3, 1974 (A. 67; 24-26), Milligan sent a letter to Franculli dated November 25, 1974, in which he stated, in part, that since 1968, "there has been no transfer of operations or interchange of production or maintenance employees between any of these plants and the Standard Plant" (A. 66-67; 27-28). Milligan's letter continued: "[L]ikewise, no bargaining unit employees in your local have been transferred nor, to our knowledge, are there any people who are working both at the Standard Plant and at any of the other plants mentioned above" (Ibid.). Lastly, Milligan stated that "the products at each plant continue to be manufactured, as they have in the past, on a separate basis and without any integrated production operations whatsoever" (Ibid.).

H. The Company moves more work out of the Standard Plant

In December 1974 or January 1975, Standard Plant employee Perdetto transported some tools from the plant to Waterbury. When Union President Franculli asked Industrial Relations Manager Milligan about the matter, Milligan responded that Perdetto had taken the tools to Waterbury for experimental work on the swaging of parts at that facility (A. 59; 177-178).

In May 1975, Joseph Alibozak, a Standard Plant employee who works on the "Blanchard" grinder in the machine room, informed Franculli that work which had been placed alongside his machine for him to process had been removed and transported to the Waterbury plant (A. 59-60; 172-173). Subsequently, Franculli and Alibozak questioned Plant Superintendent Caputi about the transfer of the work and Caputi remarked that he didn't know anything about the matter but that he would get back to Franculli (Ibid.). Several days later, Franculli again asked Caputi about the subject and Caputi replied that the Company sent the work to Waterbury because it wanted the work completed "in a hurry" (Ibid.). When Franculli inquired about the type and quantity of work sent to Waterbury, Caputi stated that he would check and "try to get the information" (Ibid.). On June 20, 1975, Franculli asked Caputi whether he had obtained the requested data, but Caputi said that he still did not have the information (Ibid.).

II. THE BOARD'S CONCLUSION AND ORDER

On the foregoing facts, the Board found that the information requested by the Union in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, and 10 of its June 27, 1974 letter, "has a potential relevance in revealing whether or not the interrelationship of the Standard Plant and the four other plants (Waterbury, Thomaston, Bantam and Morris) as to employment structure, employees, and work products, is of such a nature as to constitute a merging into or accretion of the employees," thereby involving representation rights and responsibilities under Article XV,

Section 15.2 of the collective bargaining contract (A. 69-70). For with such information, the Union "can evaluate whether to attempt by arbitration or even by a new unfair labor practice charge to secure recognition as a bargaining agent in a possible merged or accredited bargaining unit" (A. 77). Accordingly, the Board concluded that the Company violated Section 8(a)(5) and (1) of the Act by refusing to respond to the above-specified portions of the Union's June 27, 1974, request for information, since the Union had a legitimate need for such information "in order to intelligently police and administer the contract provisions pertaining to potential recognition rights". (A. 71). Finally, the Board found that the Company's subsequent partial response to the Union on November 25, 1974, did not purport to supply five of the pertinent items of information sought by the Union (A. 75) and was inadequate with respect to two of the four items to which the Company did purport to make a reply (A. 74-75). With respect to the remaining two items, the Board concluded that the facts were insufficient to permit a determination of whether the Company had met its obligation to supply the requested information (A. 73-74), and the Board indicated that this matter should be resolved in the compliance stage of this proceeding (A. 80).

The Board's order (A. 81-83, 96) requires the Company, inter alia, to furnish the necessary and relevant information requested in items 1, 3, 4, 5, 6, 7, 8, 9 and 10 of the Union's June 27, 1974 letter, and to post the customary notices.

ARGUMENT

THE BOARD PROPERLY FOUND THAT THE COMPANY VIOLATED SECTION 8(a)(5) AND (1) OF THE ACT BY REFUSING TO SUPPLY THE UNION WITH INFORMATION CONCERNING ITS OPERATIONS IN WATERBURY, THOMASTON, BANTAM, AND MORRIS

A. Applicable principles

It is well-settled that an employer has a statutory obligation to provide relevant information needed by a union for the proper performance of its duties, and his failure to meet this duty constitutes a refusal to bargain, in violation of Section 8(a)(5) and (1). N.L.R.B. v. Acme Industrial Co., 385 U.S. 432, 435-436 (1967); Prudential Insurance Co. v. N.L.R.B., 412 F. 2d 77 (C.A. 2, 1969), cert. denied, 396 U.S. 928. It is equally well-settled that this right to all relevant information is not limited to the period during which the employer and the Union are engaged in negotiations for a collective bargaining agreement, but includes the processing of grievances under the bargaining agreement and the Union's bona fide actions in administering the bargaining agreement during the period of its existence. N.L.R.B. v. Acme Industrial Co., supra, 385 U.S. at 435-438. Moreover, the range of relevance is not limited by the boundaries of the bargaining unit. Hence, the Board, with court approval, has held that employers may be required to furnish a union with information relating to employees outside the bargaining unit (Curtiss-Wright Corporation v. N.L.R.B., 347 F. 2d 61 (C.A. 3, 1965); N.L.R.B. v. Goodyear Aerospace Corp., 388 F. 2d 673, 674 (C.A. 6, 1968), even where the non-unit employees are

located at another facility of the employer. (N.L.R.B. v. Rockwell-Standard Corp., 410 F. 2d 953 (C.A. 6, 1969); Hollywood Brands, Inc., 142 NLRB 304, enforced, 324 F. 2d 956 (C.A. 5, 1963), cert. denied, 377 U.S. 923.) 6/

Furthermore, in assessing the relevance of the requested information, wage data and other information concerning bargaining unit employees is deemed presumptively relevant, while information concerning employees outside the unit must be shown to be "relevant to bargainable issues." N.L.R.B. v. Rockwell-Standard Corp., supra, 410 F. 2d at 957. The burden of proof is thus different, but "ultimate standard of relevancy is the same in all cases." Prudential Insurance Co. v. N.L.R.B., supra, 412 F. 2d at 84. See Curtiss-Wright Corp., Aero Div. v. N.L.R.B., supra, 347 F. 2d at 69-70; N.L.R.B. v. Goodyear Aerospace Corp., supra, 388 F. 2d at 674. 7/ The appropriate test for determining whether an employer

6/ Indeed, the Board has determined that the obligation to provide information extends to data concerning benefits given retirees who have left the bargaining unit and are not even considered employees within the meaning of the Act (Connecticut Light and Power Co., 220 NLRB No. 143, 90 LRRM 1307, (1975) enforced without opinion (C.A. 2, No. 75-4267, May 6, 1976)) and to wages and benefits paid to supervisors who are ineligible to use the protections of the Act to require an employer to bargain concerning their own terms and conditions of employment (Northwest Publications, Inc., 211 NLRB 464 (1974)).

7/ Contrary to the Company's suggestion (Br. 10-11), the requirement that a Union make a "special showing of pertinence" when seeking employer information "not ordinarily relevant to its performance as bargaining representative", (Prudential Insurance Co. v. N.L.R.B., supra, 412 F. 2d at 84) is not a difficult burden to carry. Thus, in the cases cited by this Court in Prudential Insurance, the unions satisfied the "special showing" standard with a modicum of evidence supporting their claims of relevancy. N.L.R.B. v. Acme Industrial Co., supra (union's discovery of machinery being removed from plant justified request for information related to such removal since it had "potential relevance" to union's administration of subcontracting

(continued)

is obliged under the statute to supply particular requested information is the "probability that the desired information [is] relevant, and that it [will] be of use to the Union in carrying out its statutory duties and responsibilities." N.L.R.B. v. Rockwell-Standard Corp., supra, 410 F. 2d at 957 (C.A. 6, 1969), quoting from N.L.R.B. v. Acme Industrial Corp., supra, 385 U.S. at 437 (1967) (emphasis added). This is, as the Supreme Court expressely recognized, a "discovery-type standard," not a trial-type standard, and thus allows the union access to a broad scope of potentially useful information for the purpose of effectuating the bargaining process. N.L.R.B. v. Acme Industrial Corp., supra, 385 U.S. at 437 and n. 6; N.L.R.B. v. Rockwell-Standard Corp., supra.

B. The information on the Company's operations at its four plants was relevant both to the Union's intelligent policing of the contract and to its related statutory responsibilities

Applying the liberal standard of probable or potential relevance as a guideline, the Board properly concluded that the Company had a statutory duty to provide the requested information.

7/ and plant relocation provisions of contract); N.L.R.B. v. Truitt Mfg. Co., 351 U.S. 149 (1956) (employer's claimed inability to pay requested wage increase entitled union to financial information substantiating such claims); Fafnir Bearing Co. v. N.L.R.B., 362 F. 2d 716 (C.A. 2, 1966) (union's independent time studies of employer's operations relevant to determination whether to accept proposed compensation rates or proceed to arbitration).

1. As noted in the Counterstatement, supra, the Union in 1964 negotiated the inclusion of Article XV, Section 15.2 of the contract for the purpose of protecting unit employees in the event the Company chose to carry out its threats, repeated over a span of several years, that it would move out of Torrington because of what it regarded as excessive union demands for wage and benefit increases.[8/] Section 15.2 specifically provides that if the Company does transfer any of its Torrington operations to a plant within 75 miles of Torrington, the affected employees have a right to follow their jobs without any loss of seniority. Further, in an apparent attempt to safeguard the representation rights of the unit employees, as well as to afford the Union a reasonable opportunity -- i.e., one consistent with the rights of other employees who might be affected -- to attempt to prevent the erosion of its standards, Section 15.2 provides that where Torrington operations are transferred to plants no farther than 75 miles away, the Company will recognize the Union as bargaining representative "if it is not illegal to do so" (A. 48). The rights secured in Section 15.2 are themselves safeguarded by Section 15.7, which provides that disputes about the application of these protective measures are subject to the grievance and arbitration procedures in the contract.

8/ There is no contention that the Company's position was in any way unlawful or represented anything more than a legitimate concern about labor costs. Cf. I.L.G.W.U. v. N.L.R.B. (McLoughlin Mfg. Co.), 463 F. 2d 907, 919-921 and n. 27 (C.A.D.C., 1972), and cases cited therein.

There is no dispute that the protections of Section 15.2 are fully available to the employees in the circumstance where the Company completely removes an operation from the Standard plant, where that operation is then transferred to a plant within 75 miles, and where the affected employees elect to follow their jobs. Such circumstances actually occurred in 1974 when the Company transferred its rear wheel ball bearings assembly and manufacturing operation from the Standard plant to its Bonnie Mills facility, also located in Torrington. The affected employees were accorded their transfer rights, and following the transfer, the Bonnie Mills group was considered an "accretion" [9/] to the Standard Plant bargaining unit, and hence received the benefits provided for in the Union's Standard plant contract (A. 52; 9-11, 187). Likewise, in 1968, when the Company's swaging machinery manufacturing operation was removed from the Standard plant to a newly acquired plant in Waterbury, 26 miles away, the Company conceded the applicability of Section 15.2 and the affected employees were given the opportunity to follow their jobs; on this occasion, however, a dispute arose as to whether the Union was entitled to recognition at Waterbury on an accretion theory; the matter was referred to the Board, which agreed with the Company that the Waterbury plant was not "an accretion" (A. 51; 185, 114, 3-8). [10/]

9/ See n. 10, infra.

10/ As succinctly set forth by the Third Circuit in a recent case:

> /A_/n accretion is the incorporation of employees into an already existing larger unit when such a community of interest exists among the entire group that the additional employees (Continued)

2. While the Company concedes the applicability of Section 15.2 to direct, overt transfers of operations -- such as the physical uplifting and relocation of swaging machinery and rear wheel bearing operations -- it also takes the position that Section 15.2 applies only to such situations (Br. 19-22; A. 120-125, 137-139, 146-147, 185-187). Thus, according to Company Industrial Labor Relations Manager Milligan, the term "transfer," as used in Section 15.2,

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10/ (Continued) have no separate unit identity. Thus, they are properly governed by the larger group's choice of bargaining representative. * * * An accretion and a unit determination are similar concepts, but the Board has restrictively applied the accretion principle since it operates to deny the accreted employees a vote on their choice of bargaining representative. * * * The factors relevant to finding an accretion include integration of operations, centralization of managerial and administrative control and geographic proximity. Also relevant are similarity of working conditions, skills and functions, common control over labor relations, collective bargaining history and interchangeability of employees. *** "Whether or not a particular operation constitutes an accretion or a separate unit turns . . . on the entire congeries of facts in each case." * * * An accretion decision, like other unit determinations is generally committed to the Board's informed discretion.

N.L.R.B. v. Security-Columbian Banknote Company, A Division of U.S. Banknote Corporation, _____ F. 2d _____ 93 LRRM 2409, 2053 (C.A. 3, 1976) (citations omitted). Accord, Westinghouse Electric Corp. v. N.L.R.B., 440 F. 2d 7, 11 (C.A. 2, 1971), cert. denied 404 U.S. 853; N.L.R.B. v. Horn & Hardart Co., 439 F. 2d 674 (C.A. 2, 1971); Goodyear Tire & Rubber Co., 195 NLRB 767, 770 (1972), enf. 474 F. 2d 1336 (C.A. 2, 1973).

"implies that an operation that was being performed in one place is transferred to another, and is no longer performed in the original place" (A. 120-121) (emphasis added). If a particular operation -- such as the deburring of bearings -- continues to be performed at the Company's Standard plant, then, in Milligan's view, it is not a transfer of operations to assign the deburring of a new kind of bearing (the samples of which had been produced at the Standard plant and which the employees had been led to believe would go into production there) to one of the Company's satellite plants 30 miles away in Thomaston (A. 122-124, 183-184). As explained by Channing E. Hardwood, the Company's secretary and corporate counsel, the Company distinguishes between transferring operations and assigning work. According to him, "where the /C_/ompany performs or from what plant the /C_/ompany may fill an order is entirely different from whether or not the /C_/ompany still has a grinding operation in the Standard plant, still has a heat treat operation, still has an automatic screw operation in the Standard plant" (A. 186).

3. The Company's interpretation is obviously a possible interpretation of what constitutes a transfer of operations, within the meaning of Section 15.2 of the contract. Whether it is the controlling interpretation, however, is a matter for resolution in the grievance-arbitration procedure, pursuant to Section 15.7 (A. 108-109). See N.L.R.B. v. Rockwell-Standard Corp., supra, 410 F. 2d at 957. Certainly, from the point of view of the Standard plant employees,

who have experienced "substantial" layoffs (A. 124), [11] as well as reductions in hours (A. 171-172), other interpretations readily suggest themselves. Thus, as the Board stated (A. 73):

> Conceivably, the /Company/ could continue all existing operations at the Standard Plant, and, however, move an operation in substantial effect by having the same operation performed by one or more plants but interrelated with other operations of the Standard Plant. Under such circumstances, a question could arise as to whether an operation had been moved.

Similarly, as counsel for the General Counsel suggested at the hearing (A. 124-125), to the extent that the work opportunities of the unit employees are reduced because work which would normally have been done at the Standard plant is now being assigned to the nearby satellite plants, then, to that extent, it is arguable that Standard plant operations have been transferred to those plants.

4. The Union is concededly uncertain whether unit work is being "transferred" to the Company's nearby plants, within the meaning of Section 15.2, and whether the protections contained in Section 15.2 of the collective bargaining agreement are applicable (A. 164-166). However, in view of the threats to "move out of town" which prompted the Union to negotiate for the protections contained in Section 15.2 in the first place (supra, pp. 2-3), the Union had reason to be alert to any indications that the plants in the nearby cities might be

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11/ Although the Company denies that any employees have been laid off "as a result of any transfer of operations by the Torrington Company" (A. 152), this testimony was given within the framework of the Company's own definition of a transfer of operations (A. 147), and, as indicated supra, the Company's definition of a transfer is carefully circumscribed.

expanding at the expense of the Standard plant. Further, as set forth in more detail in the Counterstatement, pp. 3-5, 8-10, at various times the Union has received disquieting indications that the Company might be transferring unit work elsewhere. For example, in making inquiries concerning the work of one of the unit employees who cut steel which was then sent to the Waterbury plant for further processing, the Union learned that the Company was taking the position that the subcontracting provisions of the contract did not apply to work sent out to plants which were owned by the Company (supra, pp. 4-5), and hence the Company was not notifying the Union when unit work was assigned to the nearby plants, rather than subcontracted (A. 174). The fact that the Company's other plants are able to perform the function of outside subcontractors suggests that, to some unknown extent, the Company has duplicated the Standard plant's operations elsewhere and can assign work to the nearby plants which might otherwise be done at the Standard plant. And, apart from instances (such as described supra, p. 10) where unit work is actually taken from a Standard plant employee's work station and sent to be performed instead at one of the nearby plants, the Union is in a poor position to determine the extent to which unit work is being transferred in this manner.

Additionally, from time to time the Union has also received reports suggesting that unit employees are being used to aid the growth and development of the nearby plants (supra, pp. 5, 8-10).

Thus, in 1973-1974 an employee in the Standard plant research department was sent to the Waterbury plant on some 16 different occasions; in 1974 another employee was sent to the same plant to set up certain work; and in 1974 or 1975 a third employee was sent to do some experimental work on some parts. In 1975 a fourth employee happened across evidence that a new kind of bearing -- the sample run of which had been produced at the Standard plant and which the employees had been led to believe would be assembled there -- was instead being assembled at one of the nearby plants. In light of the fact that the Standard plant employees have experienced substantial layoffs, as well as a reduction in hours, reports of this nature give the Union reasonable cause to fear that the normal growth and expansion which might otherwise be occuring at the Standard plant is instead being directed to the nearby plants. To so favor the nearby plants at the expense of the Standard plant arguably amounts to a transfer of operations within the meaning of Section 15.2 of the contract, and such reports are a proper basis for further inquiry on the part of the Union.

5. As shown in the Counterstatement, pp. 5-6, in April 1974, the Union acted on the basis of certain of the fragmentary reports suggesting that unit work might be being transferred to the nearby plants, and it asserted the claim that the nearby plants were "functionally inter-related with the Standard plant in Torrington both with respect to manpower and products"(A. 54). Proceeding on the theory that the protections of Section 15.2 were fully applicable, the Union then advised the Company that in its view the nearby plants came within the scope of the Standard plant contract, and it inquired whether the Company agreed or wished to discuss the matter further (ibid.).

In view of the Company's previously-stated position -- namely, that the cost of the wages and benefits demanded by the Union was a reason for transferring its Torrington operations elsewhere -- the Union's claim that the nearby plants were so inter-related with the Standard plant as to be part of the Standard unit, and covered by the Standard contract, was well-calculated to remove the economic incentive for the Company to make further transfers of unit work to those plants. The Company, however, refused to accept the Union's accretion claims. The Company denied that its nearby plants were functionally inter-related to its Torrington operations (A. 55). It further pointed out that five years earlier, the Board had rejected the Union's claim that the Waterbury plant was an accretion to the

Standard plant, and it asserted that "/n/othing has happened basically to change that situation" (ibid.).

Following the Company's rejection of the Union's claims concerning the applicability of Section 15.2 of the contract, the Union filed unfair labor practice charges alleging that the Company was unlawfully refusing to recognize it as the bargaining representative of the employees at the nearby plants (supra, p. 6). The Union was proceeding on an accretion theory, and as indicated supra, n. 10, the accretion doctrine is restrictively applied by the Board. After investigation, the Board's Regional Office determined that there was insufficient evidence upon which to issue a complaint. At this point, after consultation with its attorney, the Union decided to withdraw its charge without prejudice and to attempt to secure additional evidence to support its claim. In this factual context, the Union wrote the Company, requesting the information which the Board has concluded it was entitled to receive.

6. The Union's June 1974 request for information expressly stated that the Union's purpose was "to police and administer intelligently" Section 15.2, as well as the recognition and dues check-off provisions of the contract (A. 16), and as the Board reasonably concluded, it is clear from the letter, together with the events which preceded it, that the Union was seeking information in order to develop its claim that the nearby plants were accretions to the Standard plant unit and that it was entitled to recognition at those plants,

pursuant to Section 15.2 (A. 68-72). Further, as shown, supra if the Union were able to establish its claim that the nearby plants were part of the Standard plant unit and subject to the Standard plant contract, then, to that extent, the Standard plant employees would be protected against the Company's threat to move Torrington work out of town in order to avoid the wage and benefit costs imposed by the Union. Accordingly, as the Board found, the bargaining rights which the Union sought "would not be merely bargaining rights of the Union but rights in which all of the employees in the Standard plant unit had an interest" (A. 75).

Since the Union, in pursuing its accretion claims, was engaged in a bona fide effort to administer its collective bargaining agreement and to protect the Standard plant employees against the erosion of the bargaining unit, it was entitled to relevant information necessary for performing this function. See N.L.R.B. v. Acme Industrial Co., supra, 385 U.S. at 435-438; Herk Elevator Maintenance Corp., 197 NLRB 96, 97-98 (1972), enforced without published decision, 471 F. 2d 647 (C.A. 2, 1973). Here, the data which the Board has ordered the Company to supply is directly relevant to the merits of the Union's accretion theory. As the Board stated (A. 70):

> /S/uch items relate to transfers of operations, transfers of employees, production, products, community /of/ interest, and relationship of production processes. In composite effect, such information might reveal that there had been a merged or accreted unit. . . .

In prior cases, the Board and the courts have deemed data of this sort relevant in determining whether or not there is an accretion. See N.L.R.B. v. Baton Rouge Waterworks Co., 417 F. 2d 1065 (C.A. 5, 1969); Hershey Foods Corp., 208 NLRB 452, enfd. 90 LRRM 2890 (C.A. 3, 1974); Goodyear Tire & Rubber Co., 195 NLRB 767, 770, enfd. 474 F. 2d 1336 (C.A. 2, 1973); Electrospace Corp., 189 NLRB 572 (1971). See also Kent Plastics Corp., 183 NLRB 612 (1970). Indeed, although the Company expresses bewilderment at the Union's request to be informed of such matters as the dates on which the nearby plants were acquired, the reasons for the acquisition, and the products manufactured at these plants (Br. 11-12), each of these items was deemed relevant by the Board's Regional Director when, in 1969, he considered and rejected the Union's claim that the Waterbury plant was an accretion to the Standard plant (A. 5-7). Further, the number of employees, both at the time of acquisition and at the time of the Union's accretion claim, was also a material element in the Regional Director's 1969 decision (ibid.). To this considerable extent, then, the Union's current request for information is no more than a request (1) that the Company update and clarify the relevant information which it provided the Board with respect to the accretion question at Waterbury in 1969 and (2) that, for the first time, it provide the Union directly with equivalent information bearing on accretion issues with respect to the plants at Thomaston, Morris, and Bantam.

7. As the Board found, the information requested by the Union is also relevant since "such information might reveal that there had been transfers of operations, directly or indirectly, and that contractual . . . employee transfer rights might be asserted which would have a bearing on the question of a merged or accreted unit" (A. 70). Thus, paragraph 4 of the Union's request expressly seeks information concerning the date and nature of any transfer of operations (A. 16). Moreover, if the Union is to determine whether there has been a diversion of unit work to the nearby plants, amounting to an indirect transfer of operations, then it is highly relevant for it to receive data regarding the date and purpose of the Company's acquiring the four plants (paragraphs 1 and 3); the number of employees working at the nearby plants at the time of acquisition and at the present time (paragraph 6); and the products, as well as the volume of production of each product, at the time of acquisition and at the present time (paragraphs 8 and 9). Only with such data is the Union in a position to evaluate responsibly the reports which it has received suggesting that the Company may have duplicated Standard plant operations elsewhere and may have implemented a policy of assigning to those plants work which would otherwise have been done in the Standard plant (supra, pp. 19-21). Further, if on the basis of such data the Union is convinced that there has been a transfer of operations within the meaning of Section 15.2 of the contract, then it can invoke those provisions of Section 15.2 which permit the affected Standard plant

employees to follow their jobs. As illustrated in the Regional Director's 1969 decision concerning the Waterbury plant (A. 5-7), as well as in the accretion cases cited supra, p. 25, the number of employees electing to transfer to the nearby plants is a material consideration in determining whether or not there has been an accretion.

In sum, as shown, the information which the Union requested is necessary and relevant if the Union is to represent the Standard plant employees' interests in an effective manner and enforce the contractual rights which it negotiated on their behalf. Specifically, with such information, the Union could responsibly assess the merits of its accretion claims, evaluate its suspicions concerning the transfer of unit work, and determine the existence of any employee transfer rights. Accordingly, the Board reasonably concluded that the Company was obliged to supply the requested information. See N.L.R.B. v. Acme Industrial Co., supra, 385 U.S. at 435-438; General Electric Co. v. N.L.R.B., 466 F. 2d 1177, 1183 (C.A. 6, 1972); N.L.R.B. v. Rockwell Standard Corp., supra, 410 F. 2d at 957; Herk Elevator Maintenance Corp., supra, 197 NLRB at 98.

C. The Company's unlawful refusal to supply relevant and necessary information

Although, as shown, the information which the Union requested in paragraph 1 and paragraphs 3-10 of its June 27, 1974, letter was relevant and necessary, the Company continues to refuse to supply the Union with information concerning the date and purpose of its acquisition of the four nearby plants (paragraphs 1 and 3); the number of employees working at the nearby plants at the time of acquisition and at the present time (paragraph 6); and the products, as well as the volume of production of each product, at the time of acquisition and at the present time (paragraphs 8 and 9). Moreover, although the Company now concedes the relevance of the information which the Union requested in paragraphs 4, 5, 9, and 10 (Br. 5, 19), the Company did not purport to respond to these items in the Union's June request until November 25, 1974 -- after the Union filed unfair labor practice charges with the Board (A. 24-26, 27, 148-150). Accordingly, the Board reasonably concluded that the Company unlawfully refused to supply any of the relevant information requested by the Union between June 27, 1974 and November 25, 1974, and, further, has engaged in a continuing refusal to supply certain relevant information since November 25, 1974 (A. 78-79).

Additionally, contrary to the Company's claim (Br. 19-24), the record does not support its contention that its letter of November 25, 1974, represents a full and adequate response to those portions of the Union's request for information which it now concedes

are relevant. For example, in paragraph 10 the Union requested "/t/he name, description and volume of each product . . . which is partially processed at the Standard Plant . . . and also is partially processed at one or more of the four /nearby plants/." At the hearing below the Company conceded that there are products that are partially processed at the Standard plant and partially processed at the four nearby plants (A. 127, 129), and it further conceded that it keeps records which would reveal which operations are performed in this manner (A. 139). However, Industrial Labor Relations Manager Milligan admittedly did not consult these records before he prepared the Company's response (A. 137-140), and his own knowledge of the extent of such partial processing is admittedly incomplete (A. 137-138). And what is worse, his letter of November 25 does not tell the Union the name, description, or volume of even one of the products which are so produced; instead the letter simply states that "the products at each plant continue to be manufactured . . . on a separate basis and without any integrated production operations whatsoever" (A. 27, Co. Br. 3a).

The Company's unresponsiveness is further demonstrated by Milligan's explanation for his failure even to acknowledge those instances of partial processing of which the Union had some knowledge -- namely, the cutting of steel in the Standard plant for later use in the Waterbury plant (supra, pp. 4-5). According to Milligan, such work is a "service" (A. 127) which the Standard plant performs for the Waterbury plant, and he does not regard it as part of "an integrated production operation" (A. 129). The Union, however, did not ask for

Milligan's opinion concerning the extent to which the Company's Torrington area production processes are integrated, but for "/t/he name, description, and volume" of those products which are partially processed at the Standard plant and at the nearby plants. With such data the Union could form its own conclusions. Manifestly, the Company has never provided the data which the Union requested, and the Company's willingness to interpose such a conclusionary response only highlights the Union's need for the data it requested.

The Board also acted reasonably in concluding (A. 74-75) that the Company failed to respond adequately to the Union's request for the names of any unit employees who perform work both at the Standard plant and at the four nearby plants (paragraph 9). With reference to this aspect of the Union's inquiry, the Company asserted that since 1968 "there has been no . . . interchange of production or maintenance employees between any of these plants and the Standard Plant" (A. 27), and the Company further responded, "/N/or, to our knowledge, are there any people who are working both at the Standard Plant and at any of the other plants mentioned above" (ibid.).

The Company's response in this regard does not even take account of information which the Union had already received from other sources. For, to the Union's own knowledge, there was at least one instance of employee interchange subsequent to 1968 -- namely, Research Department employee David Hughes' performing work at the Waterbury plant on some 16 different occasions in 1973 and 1974 (supra, p. 5). And in

October or November 1974, about the time of the Company's November 25, 1974, statement that "to our knowledge," no employees were working both at the Standard plant and the nearby plants, Standard plant employee Anthony Stolfi went to the Waterbury plant to set up certain work (supra, p. 8). Further, the reason for the inadequacy of the Company's response appears to be that in drafting the November letter, Labor Relations Manager Milligan relied exclusively on the records of his own department (A. 135-138), and these records, while recording formal transfers, appear not to reflect the kind of temporary assignments which had come to the Union's attention at various times (A. 74; 117-118, 120, 141).[12/]

Finally, the Board (A. 80) acted reasonably in deferring to the compliance stage of this proceeding the determination of whether the Company's November 25 letter was an adequate response to paragraphs 4 and 5 of the Union's June 27 request, wherein the Union asked for the

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12/ Thus, while it is clear that Milligan's department is notified of any change in an employee's "status" -- i.e., the employee's job classification, department, or work location (A. 141) -- there is no claim that the mere assignment of a Standard plant employee to do work at one of the nearby plants involves any change of status. Indeed, the Company's narrow definition of what constitutes a transfer to another plant -- namely, that a "transfer" involves an employee's leaving the Standard plant, working exclusively at another plant, and going on the payroll of that plant (A. 118, 120) -- suggests that the operating departments have no occasion to notify Milligan every time Standard plant employees are sent to perform work at the nearby plants. Further, while Milligan's testimony indicates that it is unusual for an employee to work at another plant for "more than a few days at any one time" without being transferred formally (A. 118), here again this is an area where the Union is entitled to the data which it requested, rather than the Company's conclusions on the issue.

date and description of any transfers of operations from the Standard plant to the nearby plants, together with information about the employees involved in such transfers. As shown, the Company delayed five months before even purporting to supply what it now concedes is relevant and necessary information. Moreover, although in its belated, partial response, the Company categorically denies that there have been any transfers of operations, much less transfers of employees in connection with such transfers (A. 27, Co. Br. 22, 2a), this denial admittedly reflects the Company's own definition of a "transfer of operations" (A. 129, 147), and as shown supra, pp. 17-19, the Company's definition is narrow. Further, as shown supra, p. 26, the information which the Union requested in paragraphs 1, 3, 6, 8, and 9 of its letter -- none of which the Company purports to have supplied (Co. Br. 1a) -- will permit the Union to determine whether there has been a diversion of unit work, amounting to an indirect transfer of operations. With such information the Union will be able to determine whether it is reasonable to acquiesce in the Company's position or whether the facts require it to contend for a broader interpretation of the term "transfer of operations."

In short, although as the Board found (A. 79, 73-74), the present record does not permit a determination of whether the Company's November 25 letter, in and of itself, constitutes a refusal to supply the information requested in paragraphs 4 and 5 of the Union's letter,

the Company unlawfully delayed supplying even this much information (A. 78-79) and the information which it continues to refuse to supply is relevant to a determination of the adequacy of its purported partial response. Accordingly, the Board properly ordered the Company to produce all the relevant and necessary information requested by the Union and left to compliance proceedings the determination of the adequacy of the Company's belated response to paragraphs 4 and 5 of the Union's letter.

D. The Company's remaining contentions are without merit

1. Although as shown supra, pp. 26-27, the information which the Board ordered the Company to produce is relevant and necessary to the Union's attempt to determine if there have been indirect transfers of operations and if the Standard plant employees have contractual transfer rights of which they are presently unaware, the Company claims a right to withhold the very information which would enable the Union to detect the impairment of its contract rights until the Union first proves that operations and employees have been transferred (Br. 13-15). Then, while withholding the requested information, it complains of the absence of proof of transfers of operations and employees (Br. 15-16, 20-22).

Similarly, although as shown supra, pp. 23-25, the information which the Board ordered produced is relevant and necessary so that the Union can determine if its accretion claims have merit, the Company, while withholding the requested information, seeks to avoid the Board's order on the grounds that this record does not establish the merit of the Union's accretion claims (Br. 16-17). Since, as the transcript reference referred to by the

Company (Br. 16) actually establishes, the merits of this accretion claim were not litigated at the hearing, such a deficiency is hardly surprising.[13/]

2. In seeking to condition the Union's right to certain information on the Union's first showing that there have been transfers of operations and employees, the Company is, of course, relying on its position that Section 15.2 of the contract only applies to the overt, physical uplifting of a Standard plant operation (supra, pp. 17-18). However, as shown supra, pp. 18-19, the Union is free to contend for a broader interpretation of its contract rights which would reach indirect or covert transfers. Nor, contrary to the Company's repeated suggestion (Br. 20-21, 22), can the existence of such an issue of contract interpretation be denied on the grounds that the counsel for the General Counsel "conceded" that the Company's interpretation of the term "transfer of operations" was correct.

Contrary to the Company's claim, at the beginning of the hearing counsel for the General Counsel stated that there is "a question as to what transfer means" (A. 164) and he thereafter examined Company witnesses at length on the basis of a different definition of transfer than that used by the Company (A. 118-125, 133, 185-189). Further, at the hearing counsel for the General Counsel took the position that "we don't know whether or not work has been transferred" (A. 165), and he repeatedly indicated that one reason for the Union's request for information was to enable it to learn

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13/ At the request of the Company, the full transcript of the hearing before the Administrative Law Judge has been lodged with the Court. At page 18 of the transcript, which the Company cites as establishing a concession, the Administrative Law Judge simply asks counsel for the General Counsel, "Are you trying to litigate in this case, really, a question of an accretion?" and the representative of the General Counsel answere "No".

what work was transferred (A. 164-165, 170, 125). The so-called "concession" relied upon by the Company involves nothing more than the counsel for the General Counsel's stating that he was not asking the Administrative Law Judge to find as a fact that the shipment of cut steel to the Waterbury plant amounted to a transfer of operations, "Because we don't know either" (A. 181-182, Tr. 114).

3. Equally unavailing is the Company's contention (Br. 13-14) that the Board erred thinking that, under Section 15.2 of the contract, the Company could become obligated to recognize the Union as the bargaining representative of one of the nearby plants. Even if the Company were correct in this contention, the Union still has a right, which the Board expressly recognized (A. 77), to test out its accretion claims by filing new unfair labor practice charges, and the information which the Union requested was relevant on this basis. Cf. N.L.R.B. v. Rockwell-Standard Corp., supra, 410 F.2d at 957.

Further, it is far from clear that the Company's interpretation of the contract is correct. Industrial Relations Manager Milligan himself appeared to acknowledge that in the event of a transfer of operations, Section 15.2 of the contract would entitle the Union to receive bargaining rights "for the new location", if such recognition were not otherwise illegal, (A. 113), and this position finds support in the language of Section 15.2

of the contract.[14/]

In any event, in ordering the Company to produce information relevant to the Union's policing and administering Section 15.2 of the contract, the Board is not making a binding determination of the merits of such contract issues. Rather, as the Supreme Court indicated in N.L.R.B. v. Acme Industrial Co., supra, under the applicable "discovery-type standard", the Board's only function is to assess the probability that the requested information is "relevant and . . . would be of use to the union in carrying out its statutory duties and responsibilities" (383 U.S. at 437).

4. In opposing the Board's order, the Company complains that "[t]he record is barren of any proof of pending grievances, or a need to fashion a future contract" (Br. 18). However, the Union is entitled to relevant information necessary in order "to prepare a grievance with a full understanding of the issues". General Electric Co. v. N.L.R.B., supra, 466 F.2d at 1183. Further, the need to fashion changes in future contracts is frequently ascertained in the course of administering the current contract. By refusing the Union the information which it requested in order to police and administer Section 15.2 of the contract, the Company is preventing it from learning whether, and to what extent, the protections contained in

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[14/] In relevant part, Section 15.2 states (A. 108):

> In any such plant [i.e., a plant within a radius of 75 miles into which Torrington operations have been transferred] . . . , the Company agrees to recognize [the Union] as the bargaining representative for such employees, if it is not illegal to do so.

Contrary to the Company's contention (Br. 14), it is reasonable to construe the phrase "such employees" to refer to the employees working at the plant into which Torrington operations have been transferred.

that section are still adequate in view of the Company's current policies.

Nor is the Company correct in asserting (Br. 18) that the principles approved in N.L.R.B. v. Acme Industrial Co., supra, are inapplicable because, under Section 15.7 of the contract, the Union is "totally barred" from going to arbitration. Section 15.7 states that the Company's decision to transfer operations or subcontract work is not subject to arbitration, but any other dispute concerning the application of Section 15 is expressly made subject to arbitration (A. 109). Accordingly, disputes concerning the application of Section 15.2 to indirect or covert transfers of operations and concerning the extent of the Company's obligation to recognize the Union in the event of such transfers may be resolved in the grievance-arbitration procedure. Once it has received the information which the Board has ordered produced, the Union will be in a position to make an intelligent assessment of its rights under the contract and to decide whether it wishes to pursue these matters in the grievance-arbitration procedure. And if, as the Company appears to assume, the facts will ultimately constrain the Union to abandon its claims under Section 15.2, then, as the Supreme Court has recognized, it is important that the Union learn this at the earliest possible time. See N.L.R.B. v. Acme Industrial Co., supra, 385 U.S. at 437-438.

5. Finally, the Company is mistaken when it argues (Br. 23, 26) that weight should be given to the fact that the Regional Director initially determined that the Union's unfair labor practice charges should be dismissed (A. 29-30). This decision was overturned by the General Counsel on appeal (A. 30-31). As the Board rightfully found, the Regional Director's initial inclinations "are not probative evidence of the issues herein" (A. 68). For,

as this Court has stated, the General Counsel has final authority over the Board's prosecutorial machinery, and the Regional Director's original beliefs, subsequently rejected by the General Counsel, are not to be given any special significance. McLeod v. Local 239, Int'l Brotherhood of Teamsters, 330 F.2d 108 (C.A. 2, 1964).

CONCLUSION

For the foregoing reasons, we respectfully submit that the Company's petition for review should be denied and that the Board's order should be enforced in full.

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October 1976.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE TORRINGTON COMPANY,	:	
Petitioner,	:	
v.	:	No. 76-4135
NATIONAL LABOR RELATIONS BOARD,	:	
Respondent.	:	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that three copies of the Board's brief in the above-captioned case, have this day been served by first-class mail upon the following counsel at the address listed below:

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Dated at Washington, D.C.
this 12th day of October, 1976.

Elliott Moore
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NATIONAL LABOR RELATIONS BOARD